STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	))	BEFORE THE SOUTH CAROLINA DEPARTMENT OF INSURANCE

IN THE MATTER OF: SELF-FUNDED RATES FOR THE WORKERS' COMPENSATION ASSIGNED RISK PLAN	))))))	CORRECTIVE ACTION ORDER

This matter comes before me pursuant to the provisions of S.C. Code Ann. § 38-73-540(C) (2002). Section 38-73-540(C) provides:

> It is essential for maintaining the viability of the assigned risk plan to establish and maintain rates at a level which permits the plan to operate as a self-funded mechanism. The plan administrator shall maintain necessary rate making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the plan. All assigned carriers shall report their experience on business written under the plan to the plan administrator in a format prescribed by the plan administrator. The plan administrator shall monitor rate adequacy and plan results and shall notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action.

This order supersedes and replaces the order by the Chief Insurance Commissioner of the Department, acting with authority granted by S.C. Code Ann. § 38-73-1430 (Supp. 2000), which directed that workers compensation rate filings be treated differently for the voluntary and the assigned risk markets. As the voluntary loss costs serve as the basis for the rates in the assigned risk market, any approved revision to the current voluntary loss cost level would necessitate a similar change in the current assigned risk rate level. One of the purposes of this order is to establish a process that will synchronize rate or rule changes in the voluntary and assigned risk workers compensation insurance markets. This order implements corrective action so that assigned risk rates continue to be self-sustaining, and the assigned risk plan continues to provide a market of last resort for insureds who are unable to secure insurance in the voluntary market.

Generally, a request for insurance loss cost and assigned risk revisions are governed by S. C. Code Ann. § 38-73-910, which requires notice of a rate increase and a public hearing, if requested. In 1998, S.C. Code Ann. § 38-73-540(C) was amended to ensure that assigned risk rates are self-sustaining. It also provides a mechanism for corrective action in the event current rates are not adequate. The fact that the mechanism under § 38-73-540(C) is a permissible alternative to the hearing procedure was recognized *in NCCI v. South Carolina Department of Insurance and Philip S. Porter*, ALJ Docket No. 00-ALJ-09-0687 (2001). In this decision, Judge Kittrell ruled:

> I find and conclude that the current predicament of assigned risk servicing carriers alluded to by several witnesses is not without redress. NCCI may file for new assigned risk rates and provide newer data which might substantiate the request for a rate increase. ***I also note that S.C. Code Ann. §38-73-540(C) provides an alternate and flexible remedy.*** Under that section, assigned risk carriers shall report their experience to the plan administrator who shall notify the Department to enable the director of the Department to take corrective action, if necessary. ***Nothing in this ruling precludes the servicing carriers from having their rate needs addressed in this way.*** *(Emphasis added).*
>
> Under S.C. Code Ann.§ 38-73-540(C), the plan administrator is required to monitor rate adequacy and plan results, and is required to notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action. In recognition of the recent changes enacted by S. C. Code Ann. § 38-73-540(C), which mandate that assigned risk rates be self-funded, I find and conclude that it is equitable that the loss costs decrease of a -10.4% be applied only to the voluntary program until such time when either an amended NCCI filing is submitted ***or a corrective action granted.*** (Emphasis added).

Judge Kittrell's opinion recognized the authority of this Department to take corrective action pursuant to § 38-73-540(C) upon notice from the Plan Administrator that excessive losses exist within the assigned risk plan.

On September 16, 2005 the National Council on Compensation Insurance, as the Plan Administrator, forwarded to the Department notice that the assigned risk plan was experiencing excessive losses, thus jeopardizing the ability of the plan to operate as a self-funded mechanism. That Notice is attached to this Order as Exhibit A.

The Department has reviewed the notice and other supporting data received from the Plan Administrator. I hereby conclude that corrective action is necessary to ensure that the assigned risk plan is self-funded and self-sustaining in accordance with the requirements of § 38-73-540(C).

IT IS THEREFORE ORDERED that this order supersedes and replaces the order issued by former Insurance Commissioner John Richards on March 1, 1990.

IT IS THEREFORE ORDERED that the procedures set forth in §38-73-540(C) shall be the procedure for effecting rate or rule changes within the assigned risk plan so that rates within that market continue to be self-sustaining. Changes shall become effective upon approval of a change within the voluntary market. However, nothing in this Order shall preclude the Department from making loss costs or other changes should such change prove necessary for the rates in the assigned risk plan to be self-sustaining, not inadequate, excessive or unfairly discriminatory.

IT IS THEREFORE ORDERED that the loss costs for the assigned risk plan shall be the loss costs approved for the workers compensation insurance voluntary market.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk market, a loss cost multiplier of 2.176 shall be applied to the South Carolina voluntary market loss costs with the existing differential of 40.4%. This rate increase shall become effective upon approval of any change in loss costs in the voluntary market.

AND IT IS SO ORDERED.

Eleanor Kitzman

Eleanor Kitzman
Director

October 10, 2005 at
Columbia, South Carolina

NCCI National Council on Compensation Insurance, Inc.

Dennis Kokulak
State Relations Executive
Regulatory Services

September 16, 2005

Honorable Eleanor Kitzman, Director
South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

RE: South Carolina Assigned Risk Rates

Dear Director Kitzman:

I am providing, pursuant to Title 38, Chapter 73, Section 540 (C) of the South Carolina Code of Laws, 1976, as amended, a formal notice that excessive losses are indicated in the South Carolina Assigned Risk Plan and as such are jeopardizing the ability of the plan to operate as a self-funded mechanism. This notice is provided by the National Council on Compensation Insurance Inc., ("NCCI") in its role as plan administrator of the South Carolina Assigned Risk Plan.

In an effort to enable you to take appropriate corrective action, NCCI has, upon your request, provided to you information regarding the South Carolina Assigned Risk Plan. For your convenience I have summarized the information below.

- In order to move toward achieving the self-sustaining requirement of § 38-73-540(C) and to ensure the stability of the assigned risk workers compensation market, it is necessary to reflect a revision to the current assigned risk rate level in effect since February 15, 2005. As the voluntary market loss costs serve as the basis for the rates in the assigned risk market, any approved revision to the current voluntary loss cost level would also support at least a similar change to the current South Carolina assigned risk rate level.

- NCCI calculated an estimated loss cost multiplier (LCM) at the request of the South Carolina Department of Insurance incorporating the actual calendar year 2004 Plan Administration and Other Expenses, which total $1,594,616. Based on this information the indicated increase in assigned risk expenses is 0.9%. Please note that this expense total does not include the $500,000 for Fraud Prevention, which the Department of Insurance requested to be included in the LCM calculation in 2004. If an additional $500,000 for Fraud Prevention were once again included in the determination of the LCM, the indicated change in assigned risk expenses would be +2.6%.

- After reviewing the adequacy of the current South Carolina assigned risk loss cost differential (equal to 40.4%) in effect since February 15, 2005, it is the opinion of NCCI that no revision to this figure is necessary.

Accordingly, NCCI requests that the South Carolina Department of Insurance take corrective action in accordance with and pursuant to Title 38, Chapter 73, Section 540 (C) of the South Carolina Code of Laws.

In the event you require additional information please do not hesitate to contact me.

Sincerely,

Dennis Kokulak

Dennis Kokulak
State Relations Executive

901 Peninsula Corporate Circle, Boca Raton, Florida 33487
Phone (561) 893-3184 FAX (561) 893-5397

SOUTH CAROLINA - ASSIGNED RISK

Section A - Determination of Permissible Loss Ratio

The assigned risk expense provision including loss-based expenses is derived directly from the servicing carrier allowance, since this is the market-based cost of the Assigned Risk Plan to have the Plan serviced. A provision for plan management expenses and the average commission rate must be added to the allowance to derive an average expense provision.

	Current Expense Provisions $230 EC	Proposed Expense Provisions $230 EC
(1) Weighted-average of Successful Servicing Carrier Allowance Bids Effective 5/1/03.	39.5%	39.4%
(2) Plan Administration Expense and Other Expense Provision (See Sec. C)	2.2%	2.8%
(3) Factor to Convert Expense Ratios to a Standard Premium excluding Expense Constant Premium Basis	1.014	1.013
(4) Servicing Carrier Allowance and Admin. and Other Expense Provision as a % of Standard Premium excluding Expense Constant Premium = [(1) + (2)] x (3)	42.3%	42.7%
(5) Average Commission as a % of Standard Premium excluding Expense Constant Premium (See Sec. D)	4.1%	4.1%
(6) Expenses Covered by the Expense Constant	1.4%	1.3%
(7) Total Expense Provision: Including Loss-based Expenses and Taxes and excluding Expense Constant Premium = (4) + (5) - (6)	45.0%	45.5%
(8) Permissible Loss Ratio = [100% - (7)]	55.0%	54.5%

SOUTH CAROLINA - ASSIGNED RISK

Section B - Calculation of Change in Expense Provisions

	(A) Current Expenses	(B) Col (A) with Proposed Expenses	
(1) Total Expenses (See Sec. A)	45.0%	45.5%	
(2) Permissible Loss Ratio = [100% - (1)]	55.0%	54.5%	
(3) Expense Constant	$230	$230	
(4) Effect of Change in Expenses = (2A) / (2B)		1.009	(+0.9%)

Section C - Derivation of Plan Administration and Other Expense Provision

Calendar Year	Gross Written Premium	Administration and Other Expenses	Admin and Other Expenses as a % of GWP
1996	39,890,786	1,382,384	3.5%
1997	23,512,400	1,086,597	4.6%
1998	12,712,230	1,602,938	12.6%
2004	57,548,399	1,594,616	2.8%
Plan Administration and Other Expense Provision:			2.8%

Section D - Derivation of Average Commission

Portion of Total Earned Premium	Premium Distribution	Commission Scale
First $1,000	15.0%	8.0%
Next $4,000	21.2%	5.0%
Next $95,000	52.1%	3.0%
Over $100,000	11.7%	2.0%
Total/Average	100.0%	4.1%